| 1 | AARON D. FORD Attorney General | |
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| 2 | D. Randall Gilmer (Bar No. 14001) Chief Deputy Attorney General | |
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| 7 8 | Attorneys for Defendants Daniels, Wickham, Gittere, Reubart, Drummond, Minev, Green and Fox (NDOC Defendants) | |
| 9 | UNITED STATES | DISTRICT COURT |
| 0 | DISTRICT | OF NEVADA |
| 1 | ZANE M. FLOYD, | Case No. 3:21-cv-00176-RFB-CLB |
| $\lfloor 2 \rfloor$ | Plaintiff, | DECLARATION OF LINDA FOX, |
| 13 | V. | PHARMACY DIRECTOR OF THE NEVADA DEPARTMENT OF |
| 4 | CHARLES DANIELS, DIRECTOR, NEVADA DEPARTMENT OF CORRECTIONS, ET AL., | CORRECTIONS PURSUANT TO MINUTE ORDER DATED JUNE 30, 2021 |
| 15 | Defendants. | (ECF No. 115) |
| 16 | | |
| L7 L8 | I I indo Foy haraby dealers based on person |] nal knowledge and/or information and belief, that the |
| | | nai knowledge and/or information and benef, that the |
| 19 20 | following assertions are true. | with the State of Navada since 1000 |
| | 1. I have been a registered pharmacist of the | |
| $\begin{bmatrix} 21 \\ 22 \end{bmatrix}$ | 2. I have worked as a pharmacist for the 2004. | ne Nevada Department of Corrections (NDOC) since |
| 23 | | or for the NDOC, a position I have held since 2010 |
| | | or for the NDOC, a position I have held since 2010 |
| 24 | | of Pharmacy or Pharmacy Director. I am responsible |
| 25 | | pharmaceutical services for the NDOC. This position |
| 26 | | that medications are ordered, obtained, and properly |
| 27 | stored and secured until they are utilized for their in | nended use. |
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- 4. I am providing this Declaration to the Court at the request of my counsel, as it is my understanding the Court has sought the following information pertaining to each of the drugs referenced in the Execution Manual:
 - a. "when the drug or drug batch was purchased,"
 - "[w]hen the drug or drug batch was received by the NDOC, and"
 - c. "the expiration date for the respective drug or drug batch expired."
- 5. In response to these three specific questions, there is some important information I need to share with the Court as to the processes and storage information to put the information into context.
- 6. First, for purpose the Court's question in \P 4(a), I am providing the information for the date of ordering the drugs, which to me as a layperson I consider purchasing, and based on the context of the Court's question, appears to be what the Court is requesting information on. I would have to defer to my counsel as to whether there is a distinction between ordering and purchasing.
- Second, with regard to the Court's question in ¶ 4(b), I note that the general and standard 7. practice is that NDOC receives a drug the next business day following the drug being ordered/purchased on the Cardinal website portal. This is generally noted by the "stamped received" marking on the invoice and also generally aligns with the date listed on the invoice immediately following the "Cust. No." box on the right-hand side of the invoice. The invoices also note the "order date" in the box entitled the same. As an example, I direct the Court to one of the invoices that will be referenced below and contained in "Attachment 2" to this Declaration, NDOC0001.
- 8. Third, with regard to the Court's question in $\P 4(c)$, once the drugs are received, they are stored in the same location in the pharmacy, and it is not possible at that point to determine which "batch" the drug was part of, due the manner in which the medications are stored. I can certainly provide the expiration dates for each of the drugs as requested. I simply cannot provide to this Court what specific order unless the drug is the only supply of the drug in NDOC's possession, or the only supply of that drug from a particular manufacturer. This is because if the drug is from the same manufacturer, once ordered, received, and purchased, the drugs are stored in the same location without any readily available markings or posting suggesting which "batch" the drug was part of at the time of ordering.

- 9. With those three important caveats, I believe I can provide this Court with the information it seeks for "all drugs (including different batches of the same drug) listed in the Execution Protocol" as referenced in the Order and referenced in ¶¶ 4(a)-(c) above.
- "Attachment 1," which provides five categories: (1) drug name and quantity; (2) invoice bates number; (3) order/purchase date; (4) receive date; and (5) expiration date. The invoices referenced in category two of the chart are located in "Attachment 2." The "drug name" referenced in the chart is the generic name for the drug, e.g. fentanyl, alfentanil, ketamine, cisatracuriam, potassium chloride or potassium acetate, and not the specific brand name, which can be found on the invoices. The use of the word "I" in any footnotes in the Chart at Attachment 1 should be read as referring to me, Linda Fox. The Chart has been organized alphabetically and in order the drugs are injected pursuant to the Execution Protocol. They have also been organized in reverse chronological order from the date of order/purchase.
- 11. I do not believe there is any other "underlying documentation" pertinent to the Court's question, but in an abundance of caution I have also provided the "perpetual inventory logs," which I understand have previously been disseminated in response to a public records request. Those logs are located at "Attachment 3." NDOC Pharmacy maintains perpetual logs for controlled substances and therefore no such logs exist for any purchases of cisatracuriam, potassium chloride, or potassium acetate as those are not controlled substances. I have not yet completed the perpetual log for the alfentanil purchase of June 1, 2021 contained in the Chart. Therefore, there is no log to provide to the Court regarding that purchase. However, the information contained in the Chart pertaining to the June 1, 2021 purchase is accurate and correct. These logs are being provided to the Court as further support for the quantities, whereabouts, and expiration dates associated with the drugs set forth herein. Please note the logs also contain other drugs not listed in the Chart as the drugs were purchased prior to 2018. To ensure there is no confusion however, the Chart accurately reflects the current stock of drugs referenced in the Execution Manual.

12. I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct. EXECUTED this 30th day of June, 2021. /s/ Linda Fox* Chief Linda Fox Pharmacy Director, Nevada Department of Corrections gs.pdf, and as extended on March 29, 2021, https://www.nvd.uscourts.gov/wp-content/uploads/2021/03/Order-Extending-GO-2020-05.pdf, Chief Fox has authorized counsel to affix her electronic signature to this Declaration. Should counsel have misconstrued these Temporary Orders in any way, or if the Court wishes to have a hand-signed copy of this Declaration, one will be provided to the Court upon request.

| 1 | Index of Exhibits |
|------------------|--|
| 2 | Attachment 1 – Chart of Drugs (Partially Redacted) |
| 3 | Attachment 2 – Invoices |
| 4 | Attachment 3 – Perpetual Inventory Logs |
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ATTACHMENT 1 – CHART OF DRUGS (PARTIALLY REDACTED)

| DRUG AND QUANTITY | INVOICE BATES NUMBER | ORDER/PURCHASE DATE | RECEIVED DATE | EXPIRATION DATE |
|------------------------|------------------------|---------------------|----------------|-----------------------------------|
| Alfentanil – 80,000mcg | NDOC0004 | June 1, 2021 | June 2, 2021 | |
| Alfentanil – 25,000mcg | NDOC0001 | May 25, 2021 | May 26, 2021 | |
| Alfentanil – 80,000mcg | NDOC-DPP-0024/NDOC0021 | March 31, 2021 | April 1, 2021 | Unknown/Not in Stock ¹ |
| Fentanyl – 2,500mcg | NDOC0011 | March 30, 2018 | April 2, 2018 | All stock expires by |
| Ketamine – 2,500mg | NDOC0003 | May 25, 2021 | May 26, 2021 | |
| Ketamine – 10,000mg | NDOC0008/NDOC-DPP-0030 | July 3, 2019 | July 5, 2019 | |
| Ketamine – 15,000mg | NDOC0007/NDOC-DPP-0029 | July 2, 2019 | July 3, 2019 | |
| Cisatracuriam – 400mg | NDOC0002 | May 25, 2021 | May 26, 2021 | |
| Cisatracuriam – 200mg | NDOC0009 | May 2, 2018 | May 3, 2018 | June 1, 2019 |
| Cisatracuriam – 200mg | NDOC0010 | April 9, 2018 | April 10, 2018 | April 1, 2019 |
| Cisatracuriam 100mg | NDOC0012 | March 30, 2018 | April 2, 2018 | February 1, 2019 |
| Potassium Acetate – | NDOC0002 | May 25, 2021 | May 26, 2021 | |
| 1000mEq | | | | |
| Potassium Acetate – | NDOC0023 | March 31, 2021 | April 1, 2021 | Unknown/Not in Stock ³ |
| 2000mEq | | | | |
| Potassium Chloride – | NDOC0006/NDOC-DPP-0028 | July 5, 2019 | July 8, 2019 | July 31,2021 |
| 1600mEq | | | | |

¹ I was instructed to return this order by Director Daniels and therefore it is not in NDOC's possession, and I do not know the expiration date. The credit invoice indicates we received credit for this return on April 28, 2021. *See* NDOC-DPP-0025/NDOC0022.

² I have provided the Court with all purchases of fentanyl from 2018 forward as requested by this Court; however, NDOC has possession of unexpired fentanyl that predates the 2018 date the Court sought ordering date receive date information for. In total, NDOC has a total amount of 32,500 mcg of unexpired fentanyl on hand. The following quantities of expire on the following dates: 15,000mcg on June 30, 2021; 15,000mcg on August 31, 2021; and 2,500mcg on

³ This drug was returned based on instructions from Director Daniels on or about April 8, 2021. See NDOC0005.

ATTACHMENT 2 – INVOICES

2 of 16 Case 3:21 -00176-RFB-CLB Document 116-3 Filed 06/30/21 Page HERMUNDER NV DEPT OF COLUMN 1 CENTRAL PHCY
1 3955 W RUSSELL RD-CAS For SDS Visit: http:// တင္ drugs can be accessed via your usual ordering platto Express or Med eCommerce, or at cardinalhealth.com/trace. Effective January 1, 2015, DSCSA Transaction Data for qualified prescription drugs can be accessed via your usual ordering platform, such as Order Non-wholesale customers are final dispensers that are purchasing for their own use and will not redistribute prescription pharmaceuticals to any other entity. 4349825 INVOICE Note Codes: 過度調明 Contract Item Override
Contract Net Special Pricing BLEASE CardinalHealth AIHS 17478-0067-05 丁〇丁互排 OF CORRECTION REMIT YOUR NDC/UPC ଓଟ୍ଟସ C/O BANK OF PO BOX 56412 DATE: LOS ANGHLES, Special Net Price Override 478-8500 RD-CASA PAYMENTS TO LHEALTH LIG K OF AMERICA の場合語 7000000 M.M.M. 25 Omit Codes: C Dropship 2 DC Out 3 Mfr Out GTY CROERED CIR GRANDE 202 _mycardinalsdspd_com 調體 1 GEADINS IN AZO O $C_{\mathbb{A}}$ PHCY 4 Not stocked 5 Mfr Disc 6 DC Disc ₩ O PIECES SHIPPED G/K 鬱 0074-6412 TOTAL PIECES SHIPPED FOLLOWING ADDRESS: Y A A W M B DEA NET 0-Iσ Total ۳ ALFENTA 7 Drug Recall
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9 Restricted item
5 Regulatory Review 600 N 83RD AVE CENTRAL NV DEPT TOLLESON, AZ 8535 CARDINAL HEALTH RW-0263056 955 W RUSSELL RD-CASA AMOUNT VEGAS, NV 89118 ហ OOMCG/ML 10X5ML PHCY OF CORRECTION DESCRIPTION FORM 222: The prices shown on this invoice are net of discounts provided at the time of purchase. Some of the products listed on this invoice may be subject to additional discounts or rebates. Please refer to your contract for any specific additional discounts or rebates that may apply to these purchases. You may have an obligation pursuant to 42 USC §1320a-7b to report discounts and rebates to Medicare, Medicaid or other governmental health care programs. FED ID 68-0158739 ist Chemical Designations
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P - Phanylpropanolamine
S - Psaudoephedrine
L - Other List Chemical 21XC00021 CTR PHCY GRANDE ß 経過機 帯が開 SIZE PAGE # (A) 366 P 垄 SHOT 高額 CUST. NO. REG NO. Ó 13 N 38 影 3264 RETAIL PRICE ω 13.51 **非典語** 施力に開始的 **医阴影性** 经营营营 읶 医糖溶解 5 CUST. DEA NO. ហ ORDER DATE FOR D 26 DATE 衛衛衛衛 がある。 \vdash **建筑线** 時間の温度 個時間 Ø ELIVERY ROUTE/STOP RECEIVED MUK ORDER NO. 6/25/21 DUE DATE 8879133 CONF. NO. COLEUS 関係の対象 TAST INVOICE COPY ORIGINAL INVOICE 6430123 S <u>ආ</u> 2 312 113.5 PRICE /26/21 21XC0002 CUSTOMER P.O. NUMBER 源海峡 (Nati 11351 EXTENSION COPY 1 <u>س</u> ب . 351 **新聞** ទ័រ

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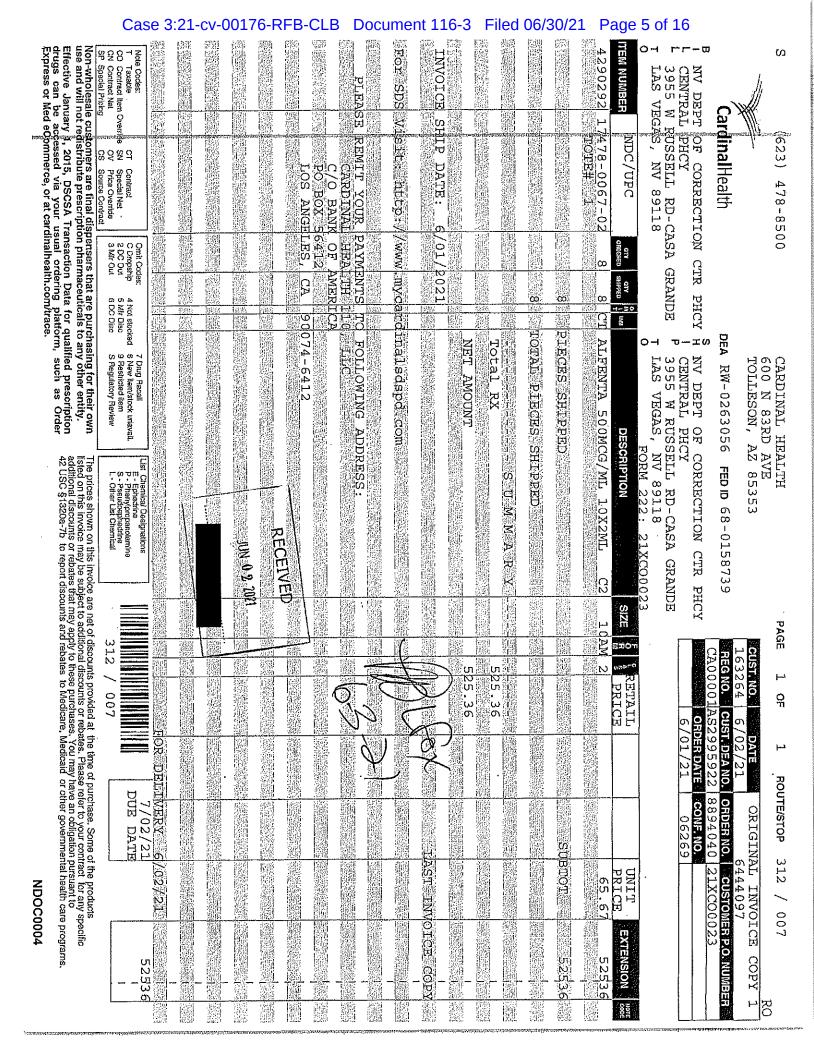
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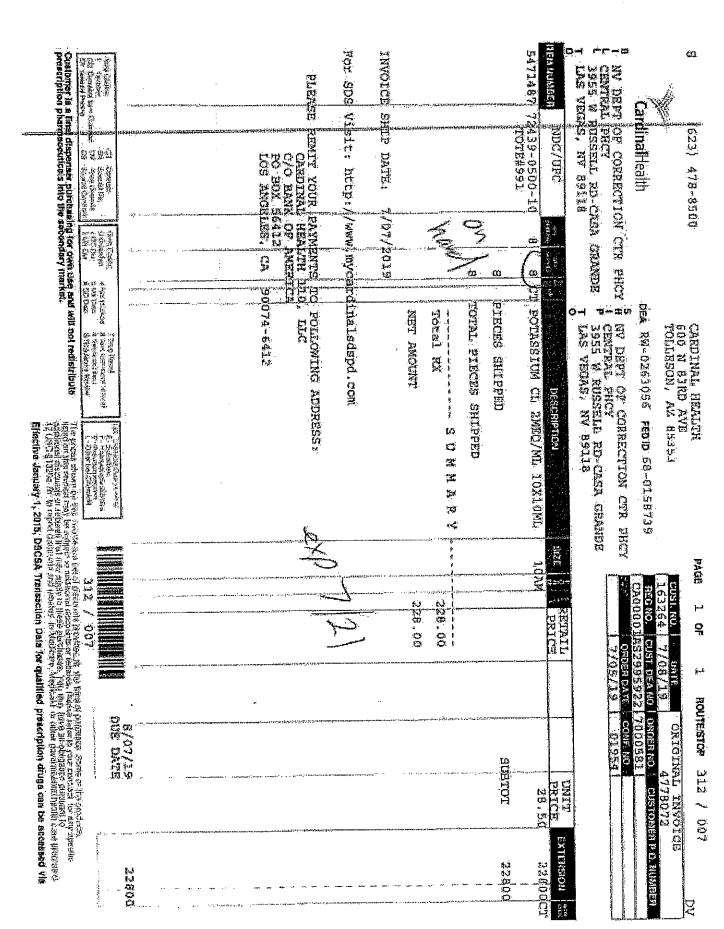
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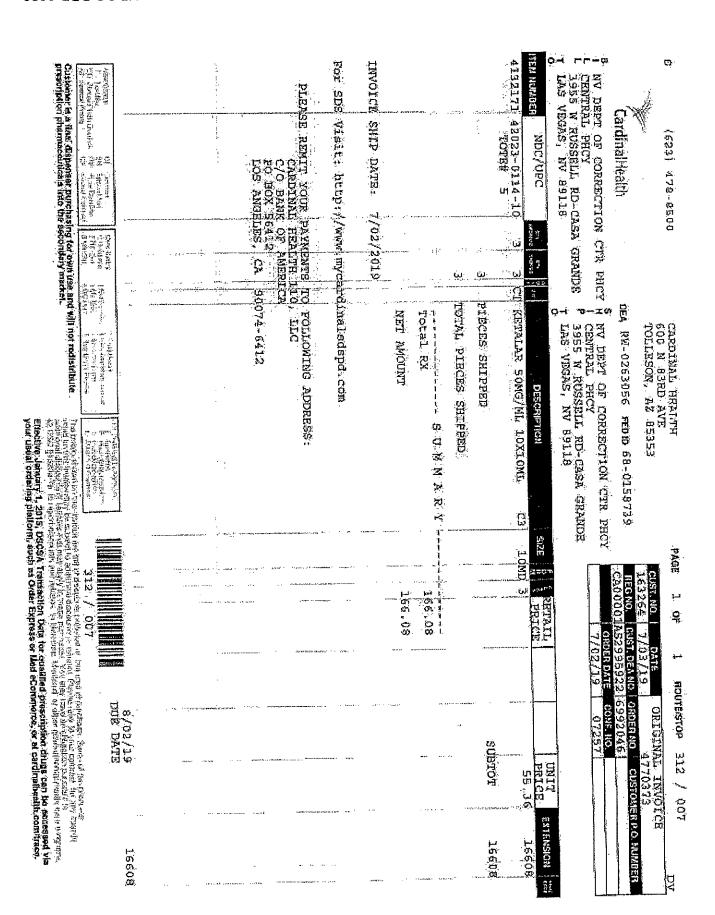
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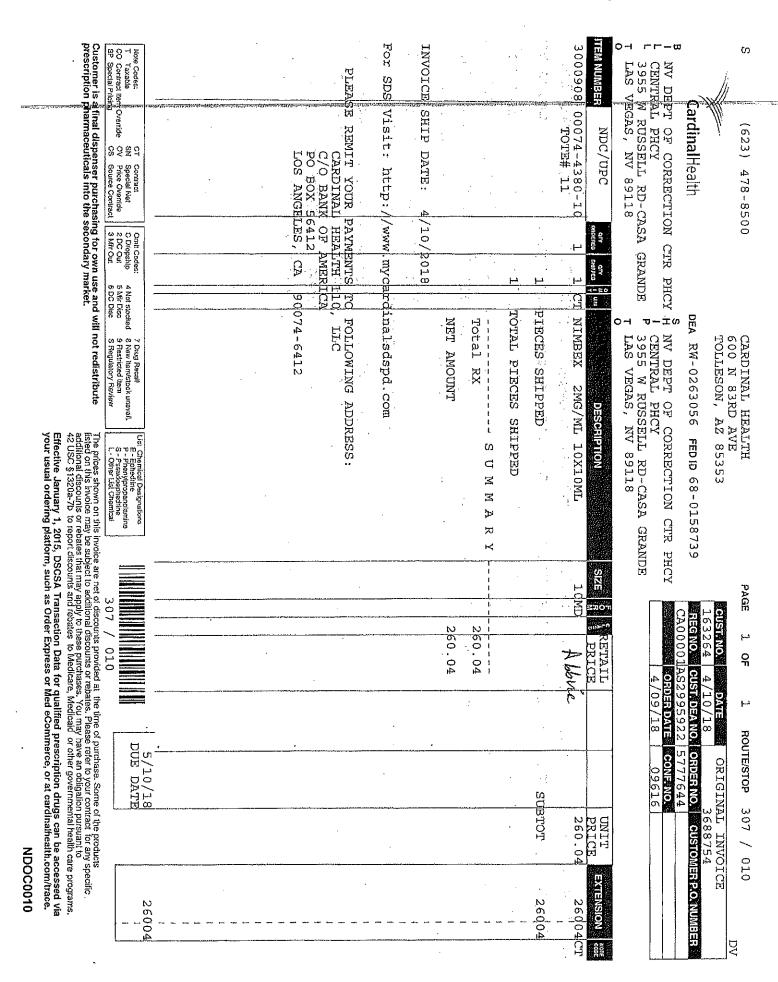
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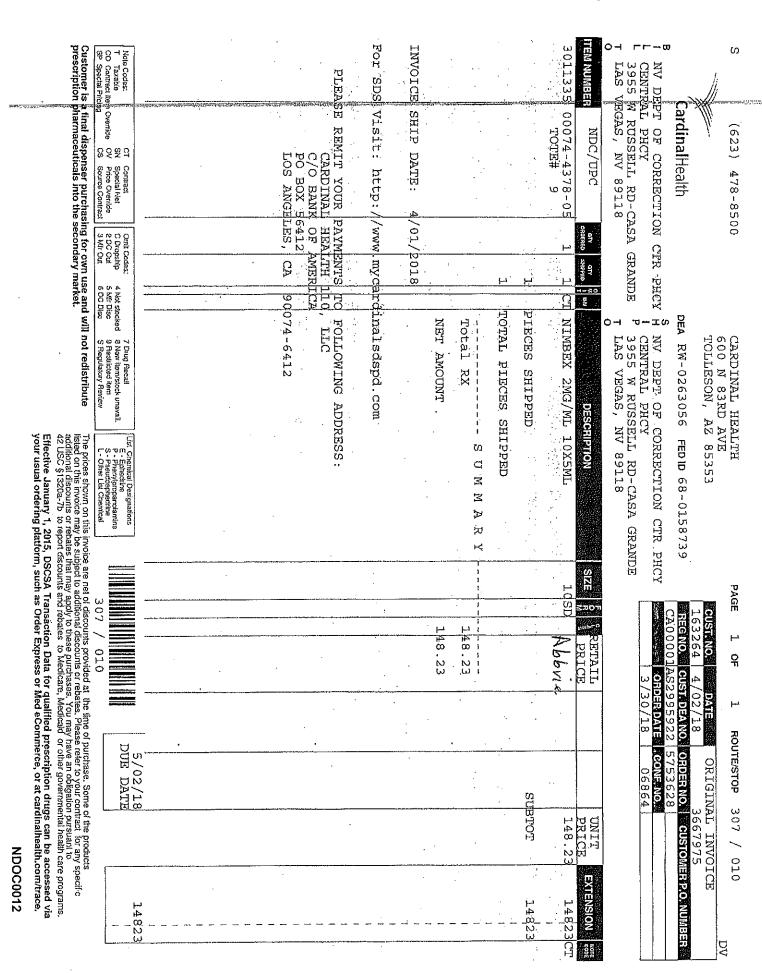


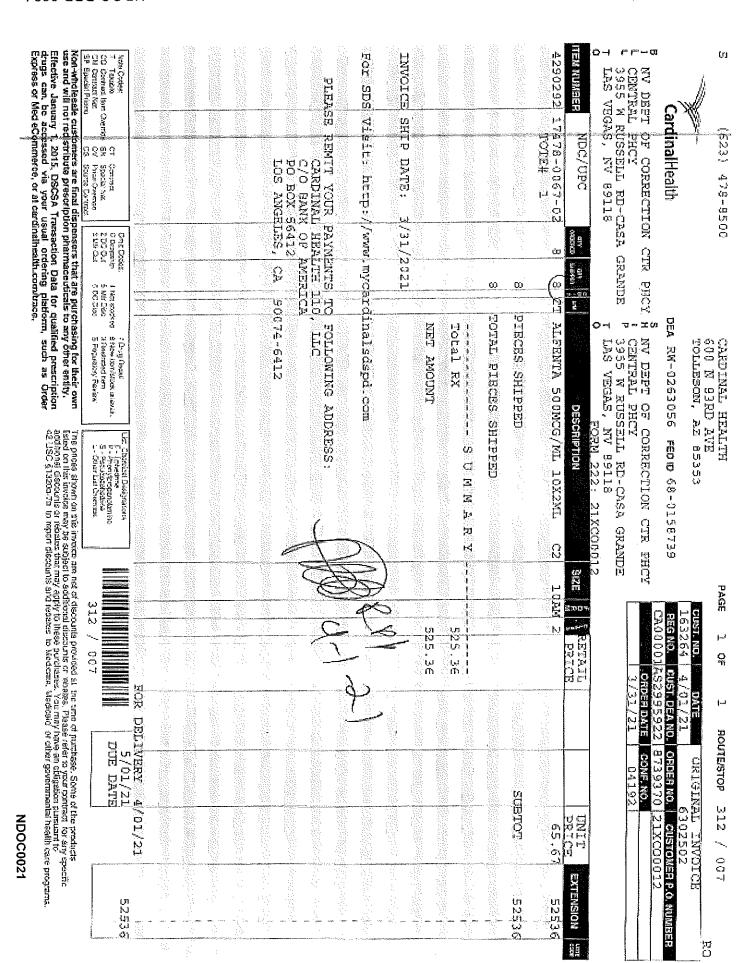
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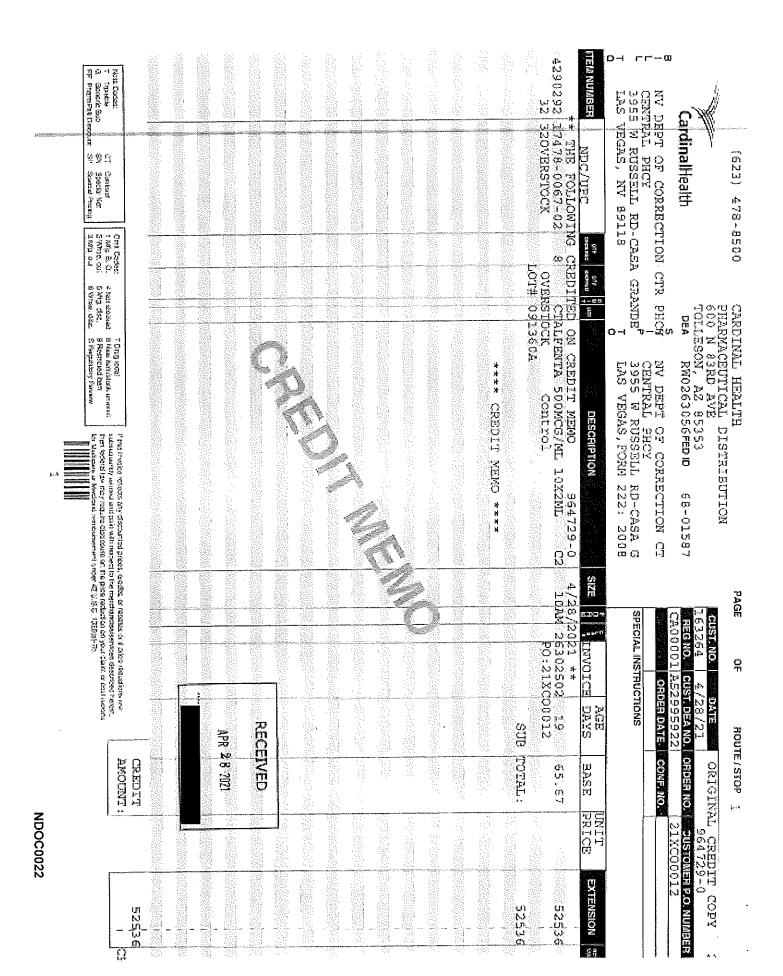


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| ce are net of discounts provided at the ibbject to additional discounts or rebates, that may apply to these purchases. You is counts and rebates to Medicare, Mediscounts and rebates to Medicare, Meding DSCSA Transaction Data for qualific m, such as Order Express or Medicare. | 307 / 010 | FOR | ed with a tp://www.f | | | | | 2 2 3 1 3 3 1 3 2 2 1 | | | | IGAM 2 A L | | 163264 4/02/18 REGNO. CUST DEANO. CA00001 AS2995922 | |
| Jascounts provided at the time of parchase. Some of the products bind discounts or rebates. Please refer to your contract for any specific by to these purchases. You may have an obligation pursuant to rebates to Medicare, Medicaid or other governmental health care programs, insaction Data for qualified prescription drugs can be accessed via Order Express or Med eCommerce, or at cardinalhealth.com/trace. | DUE DATE | ERY OO' | ~ ⊭ | | | | • | | | SUBTOT | | UNIT PRICE 23,2 | 06853 | 36 ORDER NO. 5753613 1 | ORIGINAL |
| ucis ny specific to sere programs accessed via h.com/trace. | F 2 C 2 | 3 . | obtain a m ety/ucm0857 | | | · · · · · · · · · · · · · · · · · · · | | | | 2324 | | EXTENSION COSE 24 2324CT | | 67966 CUSTOMER P.O. NUMBER. 8XCO0010 | INVOICE |

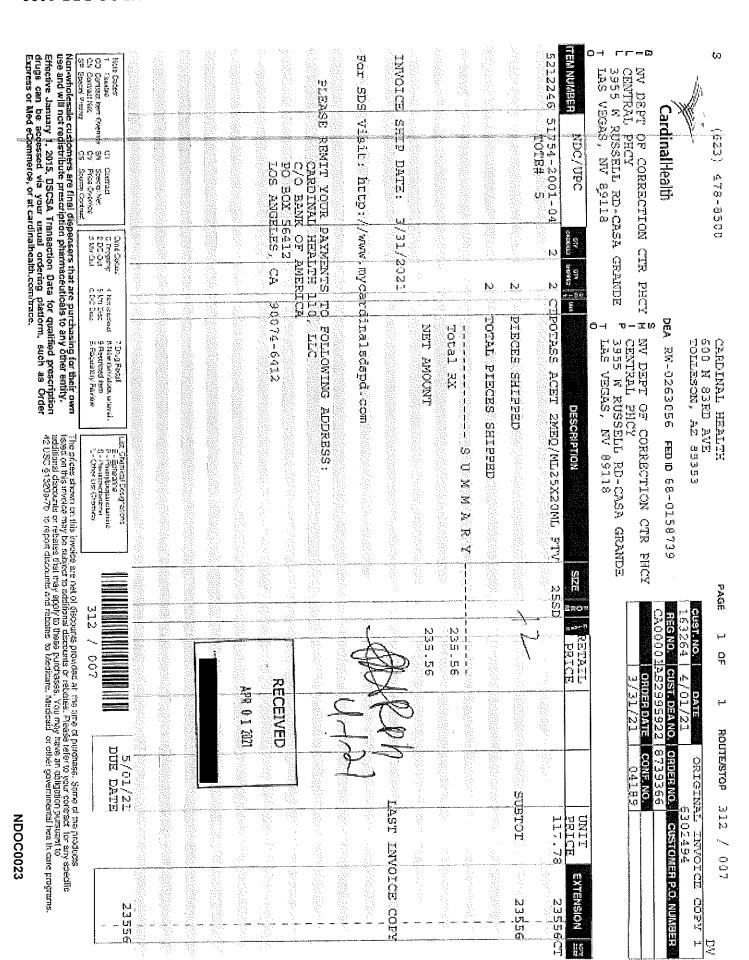
NDOC0011







NDOC-DPP-0026



ATTACHMENT 3 – PERPETUAL INVENTORTY LOGS

| | ALFENTAN | IIL HCL | | Strength: | 500MCG/M | |
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| Dose Form: | IV | | | NDC Page#: | 17478-0067 | <u>/-U5</u> |
| | In the | | 10-100 | | | |
| Date | Unit | Control Number(s) | Alla Man | Qty. Disp. | | R. Ph. Signature |
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| | Name Drug | Fenlanyl | Strength: | 100mcg/2ml |
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| | Dose Form: | Ampules | NDC#: | 17478-0030-25 |
| | | | Page# | 1 |
| | Date | Unit Control Number(s) | Qty. Disp. | Balance R. Ph. Singalure |
| | 10/2/2017 | andre 1 MH 3235270 | Max 25 any | stiboxes the |
| | 06/26/18 | ESP 179980 | -6kg | |
| | 07/02/18 | ESP (50mL) | - 1 bo | - S//- A.A. (S.) |
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| Name Drug | Fentanyl Ci | trate Inj | | | Strength: | 50mcg/ml | (250m | 19/5M | L |
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| Pose Form: | Ampules | | | | | 17478-0030 | -55 | 01 | 1 |
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| Date | Unit | Control Num | iber(s) | | Qty. Disp. | Balance | R. Phy Signa | riture | |
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| Name Drug | Fentanyl Ci | trate inj | Strength: | 250mcg/5n | nt (50mcg/ml) |
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| Dose Form: | Ampules . | | NDC#: | 17478-003 | 0-05 |
| 4 | | | Page#: | | |
| Date | Unit | Control Number(s) | Qty. Disp. | Balance | R. Ph. Signature |
| | | Balance Brought Forward | | | 002 |
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| Name Drug | Fentanyi Ci | <u>T</u> | Strength: | 50mcg/ml | 5m1 |
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| se Form. | Amp | | NDC#: | 00409-9093 | 3-35 |
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| se Form: | Vials | West-ward | NDC#: | 00641-602 | | |
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| Date | Unit | Control Number(s) | Qty. Disp. | Balance | R. Ph. Signature | |
| 9/29/2017 | Cardinal | INV#3232190 (25 vials) | 25 | | Melor | |
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| Date | Unit | Control Number(s) | Qty. Disp. | Balance | R. Ph. Signature |
|-----------|----------|------------------------|------------|---------|------------------|
| 9/29/2017 | Cardinal | INV#3232190 (25 vials) | 25 | | Melor |
| 7/2/2018 | ESP | RX -181149 (25-vials) | 25 | Ó | 1140 |
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| Name Drug | | | Strength: NDC | 50mg/ml 42023-0114-10 | | | |
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| | Name Drug | KETAMINE INJ IM INJ | | | _Strength: _NDC | 500MG/5ML | | | |
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| Name Drug | ug Ketamine | | | 50mg/ml 10ml | | | | |
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| se Form: | Vial | | NDC#: | 00409-2053-10 | | | | |
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